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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,432	01/14/2005	Keith Douglas Perring	056222-5066	8955

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MORGAN LEWIS & BOCKIUS LLP
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WASHINGTON, DC 20004

EXAMINER

KOPEC, MARK T

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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09/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,432	Applicant(s) PERRING ET AL.	
	Examiner Mark Kopec	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-14 is/are pending in the application.
 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 9-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/14/05</u> . | 6) <input type="checkbox"/> Other: ____. |

This application is a 371 of PCT/GB03/03094 (filed 07/16/03). The preliminary amendment filed 02/11/08 is entered.

Applicant's election without traverse of Group II (claims 9-14) in the reply filed on 06/06/08 is acknowledged.

Upon careful consideration, the **election of species** imposed 05/15/08 is withdrawn.

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the

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United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that

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was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 9-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sell (5,856,295).

Sell discloses amide N-ethyl-N-(3-methylphenyl)propionamide has been found to have attractive fragrance characteristics of the woody, vetiver type and so is used for imparting useful fragrance properties to fragrance compositions and to fragranced products (Abstract). Uses include personal care products and deodorants (Col 1, lines 50-60). Although the reference does not specify the claimed "reducing or preventing body malodour", the reference discloses the identical composition applied to human skin. Accordingly, the reference specifically or inherently meets each of the claimed limitations. When the claim recites using an old composition or structure and the "use" is directed to a result or property of that composition or structure, then the claim is anticipated. In re May, 574 F.2d 1082, 1090, 197 USPQ 601, 607 (CCPA 1978). With respect to instant claim 14, Sell teaches the addition of additional

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perfume components as claimed (terpineol, coumarin, hydroxycitronellal) (Col 2, line 45 to Col 3, line 5).

The reference is anticipatory.

Claims 9-14 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Holzner (6,479,456).

Holzner discloses antimicrobial perfume compositions that contain a perfume ingredient having antimicrobial activity of at least 80% as measured by the "agar surface coating test," the "vapor phase test," or by the "direct spray method." The active ingredient is grapefruit-pip, a fumitory extract, a fumaric acid or an ester of fumaric acid or lactic acid (Abstract). The reference specifically discloses use of (mixtures) of the claimed perfume components e.g. isobornyl acetate, coumarin, benzaldehyde (cumminic aldehyde), etc (Tables 1 and 2). The reference specifically or inherently meets each of the claimed limitations.

The reference is anticipatory.

In the event that any minor modifications are necessary to meet the claimed limitations, such as selection of a combination of 3 or more of such compounds, such modifications are well within the purview of the skilled artisan.

Claims 9-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Peterson et al (US 5,861,146).

Peterson et al teach methods of reducing body and/or vaginal odor comprising the application of a perfumed powder compositions comprising from about 0.1% to about 25% by weight of the composition, of uncomplexed cyclodextrin; a perfume composition selected from the group consisting of from about 0.05% to about 15%, by weight of the odor absorbing composition, of an encapsulated perfume, and from about 0.01% to about 5% by weight of the odor absorbing composition of a free perfume, and mixtures thereof; and a powder carrier. See Abstract. Preferably, the encapsulated perfume, whatever form it takes, is composed of perfume ingredients selected predominantly from two groups of ingredients, namely volatile perfume ingredients and ingredients having significant low odor detection threshold, and mixtures thereof. Typically, at least about 50%, preferably at least about 80% by weight of the encapsulated perfume is composed of perfume ingredients of these two groups. Suitable volatile perfume ingredients include cuminic aldehyde, octyl acetate, cis-jasmone, gamma-nonalactone, isobornyl acetate, methyl octyl acetaldehyde, etc., which are the same perfumes as recited by the instant claims. See column 5, line 5 to column

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6, line 27. Additionally, there are also volatile ingredients that have a significantly low odor detection threshold which are useful including allyl amyl glycolate, etc. See column 7, lines 7-20. The reference specifically or inherently meets each of the claimed limitations.

The reference is anticipatory.

In the event that any minor modifications are necessary to meet the claimed limitations, such as selection of a combination of 3 or more of such compounds, such modifications are well within the purview of the skilled artisan.

In view of the foregoing, the above claims have failed to patentably distinguish over the applied art.

The remaining references listed on forms 892 and 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Kopec whose telephone number is (571) 272-1319. The examiner can normally be reached on Monday - Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be

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reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Kopec/
Primary Examiner, Art Unit
1796

MK
September 9, 2008